

Decision 01-06-071 June 28, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Domino Networks
Communications, Inc. for a Certificate of Public
Convenience and Necessity to Provide Limited
Facilities-Based and Resold Local Exchange
Service and Limited Resold and Limited
Facilities-Based and Resold Interexchange Service
in California.

Application 01-01-020
(Filed January 11, 2001)

O P I N I O N

On January 11, 2001, Domino Networks Communications, Inc. (DNC or Applicant) filed an application pursuant to Pub. Util. Code § 1001 and the Commission's Rules of Practice and Procedure for a certificate of public convenience and necessity (CPCN) from the California Public Utilities Commission for authority to provide facilities-based and resale telecommunications services within California.

On February 20, 2001, Applicant filed a "Notification of Name Change" indicating that its business name had been changed to Zephion Networks Communications, Inc. (Zephion). We shall hereafter refer to Applicant as Zephion.

By this decision, we grant the application of Zephion for a CPCN as a competitive local carrier (CLC) to offer resold local exchange services within the territories of Pacific Bell Telephone Company (Pacific), Verizon California, Inc.

(Verizon),¹ Roseville Telephone Company and Citizens Telephone Company, subject to the terms, conditions, and restrictions included herein. In this order, we also grant limited facilities-based local exchange authority within the same territories, restricted to the use of unbundled network elements (UNEs) and the placement of equipment within previously existing buildings and structures. We further grant it authority on a statewide basis to offer nondominant interexchange carrier (NDIEC) service.

I. Background

We initially established rules for entry of facilities-based CLCs in Decision (D.) 95-07-054. Under those procedures, we processed a group of candidates that filed petitions within the Local Competition dockets (Rulemaking (R.) 95-04-043/ Investigation (I.) 95-04-044) for CPCNs by September 1, 1995. We granted authority effective January 1, 1996, for qualifying CLCs to provide facilities-based competitive local exchange service in the territories of Pacific and Verizon. We authorized CLCs seeking to provide resale-based services to begin operations on March 1, 1996. We further advised prospective entrants that any filings from non-qualifying CLCs, and any filing for CLC operating authority made after September 1, 1995, would be treated as standard applications and processed in the normal course of the Commission's business.

By D.96-12-020, effective January 1, 1997, we instituted quarterly processing cycles for granting facilities-based CPCN authority. Since we had been processing the environmental impact review required under the California Environmental Quality Act (CEQA) on a consolidated basis for groups of

¹ Verizon California Inc. was formerly known as GTE California Incorporated or GTEC.

qualifying facilities-based CLCs, we determined in D.96-12-020 to process other aspects of the CLC filings on a consolidated basis, as well. Accordingly, we directed that any CLC filing on or after January 1, 1997, for facilities-based CPCN authority was to make its filing in the form of a petition to be docketed in I.95-04-044 to be processed on a quarterly consolidated basis. CLCs seeking only resale authority continued to file individual applications.

On September 24, 1997, D.97-09-115 extended the coverage of our adopted rules for local exchange competition to include the service territories of California's two mid-sized local exchange carriers, Roseville and Citizens Telephone Companies.

Pursuant to D.99-12-050, for parties filing after January 1, 2000, we discontinued processing of CLC petitions for CPCN authority within the Local Competition dockets on a quarterly batched basis. Any party seeking authority for any form of CPCN authority as a CLC filing on or after January 1, 2000, was directed to make its filing in the form of a separate application. Accordingly, Zephion (under its prior business name) filed its CPCN application on January 11, 2001.

In this decision, we approve limited CPCN authority as set forth below for Zephion in accordance with the applicable rules for certification as established in R.95-04-043. Zephion will be authorized to begin offering service upon the approval of the Telecommunications Division (TD) staff of filed tariffs and in compliance with the terms and conditions set forth in this order.

II. CEQA Issues

In accordance with CEQA provisions, the Commission must assess the potential environmental impact of a CLC's proposed operation in order to determine that adverse effects are avoided, alternatives are investigated and,

where applicable, environmental quality is restored or enhanced as necessary. To achieve this objective, Rule 17.1 of the Rules of Practice and Procedure requires the proponent of any project subject to Commission approval to submit with its application for approval of such project a Proponent's Environmental Assessment (PEA). The PEA is used by the Commission to focus on any impacts of the project which may be of concern, and to prepare the Commission's Initial Study to determine whether the project needs a Negative Declaration or an Environmental Impact Report (EIR).

Through the second quarter of 1999, the Commission staff's practice was to prepare a negative declaration covering all CLC petitioners filing for facilities-based CPCN authority during the previous quarter.

In D.99-12-050, the Commission concluded that more individualized treatment of the environmental review of each CPCN request was warranted. Thus, effective with D.99-12-050 and until further notice, each CLC request for CPCN authority was to be individually reviewed and, if it was determined that a negative declaration or EIR is necessary, it would be prepared on an individual basis.

In D.99-10-025, we noted that various CLC petitioners did not anticipate undertaking any new construction, at least for their initial start-up operations. Instead, they intended to collocate their network equipment within the existing structure of the central offices of the Incumbent Local Exchange Carriers (ILECs), and to provide service by purchasing an ILEC's existing local loop as a UNE under federal law. Because UNEs are considered "facilities" under federal law, a facilities-based CPCN is still necessary for a CLC to operate utilizing collocation UNEs. The CLCs argued that the deficiencies identified in the negative

declaration should not prevent the Commission from granting such limited facilities-based authority at this time where no construction is involved.

We concluded in D.99-10-025 that under the limited definition of facilities-based service utilizing equipment installed in previously existing structures, no material adverse environmental impacts would result since no external construction would be involved. Accordingly, for purposes of D.99-10-025, we granted limited “facilities-based” authority in this restricted manner to each of the Petitioners covered in that order.

Zephion has requested that it be given limited facilities-based authority. As long as construction authority is limited to installing equipment in existing buildings or structures, it can be seen with certainty that there is no possibility that granting this application will have an adverse effect upon the environment. Therefore, we will grant Zephion such limited facilities-based authority at this time.

Under the limited facilities-based authority granted herein, Zephion shall be prohibited from engaging in any construction of buildings, towers, conduits, poles, or trenches. At such time in the future that Zephion may seek to engage in the construction of facilities to be used in the provision of local exchange service, it shall first be required to file a new application seeking to expand the limited facilities-based CPCN authority granted in this order. The application shall include a PEA providing a detailed description of the proposed construction. Zephion shall fully comply with CEQA.

III. Review of the Proposed Application

Applicant’s legal name, as revised on February 5, 2001, is Zephion Networks Communications, Inc. Applicant is a Delaware corporation, with its principal place of business located at 2950 Gallows Road, Falls Church, Virginia

22042. A certified copy of the Company's Articles of Organization was attached to the Application as Exhibit 1.

A copy of its "Name Change Certificate of Qualification" was filed with its Amendment. Zephion's application has been reviewed for compliance with the certification-and-entry rules (Certification Rules) adopted in Appendices A and B of D.95-07-054 and subsequent decisions in R.95-04-043/I.95-04-044. The Certification Rules are intended to protect the public against unqualified or unscrupulous carriers, while also encouraging and easing the entry of CLC providers to promote the rapid growth of competition.

Applicant seeks authority to provide facilities-based and resold local exchange telecommunications services in the service territories of Pacific and Verizon, Roseville Telephone Company and Citizen Telephone Company. Applicant is currently seeking only the limited facilities-based authority described in D.99-10-025 and D.99-12-050. Under this limited authority, Applicant shall not construct any new or extend any existing outside plant in California to provide the services for which it seeks authority.

In this order, we will grant Applicant's request for limited facilities-based authority to provide local exchange services utilizing resale of other carriers' services and/or utilizing UNEs and/or equipment installed solely within existing buildings and structures.

Applicant demonstrated that it possesses the requisite managerial qualifications, technical competence, and financial resources to provide facilities-based local exchange service.

Applicant attached Exhibit 5, a copy of its financial statements, published under its prior business name, DNC. Included under seal in Exhibit 5 are the Applicant's financial statements for the year 2000. Exhibit 5 demonstrates the

financial capability of Applicant to provide the services described in this Application, showing unencumbered cash of at least \$100,000 readily available to meet the expenses of the proposed operations.

Exhibit 4 lists Applicant's senior management and key personnel actively involved in Applicant's telecommunications business. This information demonstrates that these individuals have the requisite knowledge and capabilities to supervise Applicant's provision of proposed telecommunications services.

Applicant was also required to submit proposed tariffs which conform to the consumer protection rules set forth in Appendix B of D.95-07-054. Upon review of the draft tariff, we have identified certain deficiencies as listed in Appendix B of this order. All outstanding tariff deficiencies identified as Appendix B must be corrected before Zephion may otherwise begin to offer service.

Information concerning Applicant's estimates of the number of customers after one year and after five years was also provided under seal in Exhibit 7.

Based upon our review, we conclude Zephion has satisfactorily complied with our certification requirements for limited facilities-based and resale authority, subject to correcting any tariff deficiencies identified in Appendix B, and satisfying the additional conditions set forth in the ordering paragraphs below. Accordingly, we grant Zephion authority to offer local exchange service utilizing resale of other carriers' services or limited facilities-based service utilizing UNEs and equipment located solely within existing buildings and structures within the territories of Pacific, Verizon, RTC, and CTC. We also authorize applicant to offer service as an NDIEC on a statewide basis.

IV. Section 311(g)(2) - Uncontested decision grants relief requested

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Findings of Fact

1. Zephion filed its application (under its prior business name) seeking a CPCN to provide competitive local exchange service in the territories of the four largest California incumbent local exchange carriers and statewide interexchange service.
2. There are no protests to the application.
3. In D.99-10-025, the Commission found that further inquiry was required to resolve the CEQA issues raised by the filed comments of public agencies before full facilities-based authority could be considered for then-pending CLC petitions.
4. Prior Commission decisions authorized competition in providing local exchange telecommunications service within the service territories of Pacific, Verizon, RTC, and CTC for carriers meeting specified criteria.
5. Zephion has demonstrated that it has a minimum of \$100,000 in cash or cash equivalent reasonably liquid and readily available to meet its start-up expenses.
6. Applicant's technical experience is demonstrated by supporting documentation which provides summary biographies of key management personnel.
7. By D.97-06-107, applicants for CLC authority are exempt from Rule 18(b).

8. Exemption from the provisions of Pub. Util. Code §§ 816-830 has been granted to other nondominant carriers. (*See, e.g.*, D.86-10-007 and D.88-12-076.)

9. The transfer or encumbrance of property of nondominant carriers has been exempted from the requirements of Pub. Util. Code § 851 whenever such transfer or encumbrance serves to secure debt. (*See* D.85-11-044.)

10. The provision of local exchange telecommunications service by resale, would not have a significant effect on the environment.

Conclusions of Law

1. Zephion has the financial ability to provide the proposed services, and has made a reasonable showing of technical expertise in telecommunications.

2. Public convenience and necessity require the competitive local exchange services to be offered by Zephion subject to the terms, conditions, and restrictions set forth below.

3. Zephion must submit a complete draft of its initial tariff that complies with the requirements established by the Commission that corrects any deficiencies identified in Appendix B and includes prohibitions on unreasonable deposit requirements.

4. Zephion is subject to:

- a. The current 0.80% surcharge, changing to 1.45% effective July 1, 2001, applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the Universal Lifeline Telephone Service (Pub. Util. Code § 879; Resolution T-16412, May 18, 2000; Resolution T-16435, December 21, 2000);
- b. The current 0.00% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Relay Service and Communications Devices Fund (Pub. Util.

Code § 2881; D.98-12-073 and Resolution T-16487, December 21, 2000);

- c. The user fee provided in Pub. Util. Code §§ 431-435, which is 0.11% of gross intrastate revenue for the 2000-2001 fiscal year (Resolution M-4800);
 - d. The current surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California High Cost Fund-A (Pub. Util. Code § 739.3; D.96-10-066, pp. 3-4, App. B, Rule 1.C; set by Resolution T-16380 at 0.0% for 2000, January 20, 2000);
 - e. The current 2.6% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California High Cost Fund-B (D.96-10-066, p. 191, App. B, Rule 6.F, Resolution T-16430, September 21, 2000); and
 - f. The current 0.185% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Teleconnect Fund (D.96-10-066, p. 88, App. B, Rule 8.G; set by Resolution T-16437, September 21, 2000).
5. Applicant should be exempted from Rule 18(b).
 6. Applicant should be exempted from Pub. Util. Code §§ 816-830.
 7. Applicant should be exempted from Pub. Util. Code § 851 when the transfer or encumbrance serves to secure debt.
 8. Applicant should be granted a CPCN for local exchange resale service subject to the terms, conditions, and restrictions set forth in the order below.
 9. As long as service is limited to reselling local exchange service, or providing facilities-based service as defined herein, it can be seen with certainty that there is no possibility that granting this CPCN will have an adverse effect upon the environment.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity (CPCN) shall be granted to Zephion Networks Communications, Inc. (Zephion or Applicant) to provide competitive local exchange telecommunications services utilizing resale of other carriers' services and limited facilities-based services within the service territories of Pacific Bell Telephone Company, Verizon California Inc., Roseville Telephone Company as well as statewide authority as a nondominant interexchange carrier (NDIEC).

2. Authorization for facilities-based authority beyond the use of unbundled network elements and the placement of equipment within previously existing building and structures will require the filing a new application in conformance with California Environmental Quality Act (CEQA) requirements.

3. Applicant shall file a written acceptance of the certificate granted in this proceeding prior to commencing service.

4. Applicant shall correct the outstanding tariff deficiencies identified in Appendix B prior to being authorized to begin service.

5. a. Applicant is authorized to file with this Commission tariff schedules (incorporating Appendix B corrections) for the provisioning of competitive local exchange, services, as described in Ordering Paragraph 1. The Applicant may not offer these services until tariffs are on file, and until any applicable deficiencies have been corrected. Applicant's initial filing shall be made in accordance with General Order (GO) 96-A, excluding Sections IV, V, and VI, and shall be effective not less than one day after approval by the Telecommunications Division.

- b. Applicant is a competitive local carrier (CLC) and a nondominant interexchange carrier (NDIEC). The effectiveness of each of its future tariffs as both a CLC and NDIEC is subject to the schedules set forth in Decision (D.) 95-07-054, Appendix A, § 4E:
- A. “E. CLCs shall be subject to the following tariff and contract-filing, revision and service-pricing standards.
- “(1) Uniform rate reductions for existing tariff services shall become effective on five (5) working days’ notice to the Commission. Customer notification is not required for rate decreases.
 - “(2) Uniform major rate increases for existing tariff services shall become effective on thirty (30) days’ notice to the Commission, and shall require bill inserts, or a message on the bill itself, or first class mail notice to customers at least 30 days in advance of the pending rate increase.
 - “(3) Uniform minor rate increase, as defined in D.95-07-054, shall become effective on not less than five (5) working days’ notice to the Commission. Customer notification is not required for such minor rate increase.
 - “(4) Advice letter filing for new services and for all other types of tariff revisions, except changes in text not affecting rates or relocations of text in the tariff schedules, shall become effective on forty (40) days’ notice to the Commission.
 - “(5) Advice letter filings revising the text or location of text material which do not result in an increase in any rate or charge shall become effective on not less than five (5) days’ notice to the Commission.
 - “(6) Contracts shall be subject to GO 96-A rules for NDIECs, except interconnection contracts.
 - “(7) CLCs shall file tariffs in accordance with PU Code Section 876.”

6. Applicant may deviate from the following provisions of GO 96-A:
(a) paragraph II.C.(1)(b), which requires consecutive sheet numbering and prohibits the reuse of sheet numbers, and (b) paragraph II.C.(4), which requires that “a separate sheet or series of sheets should be used for each rule.” Tariff filings incorporating these deviations shall be subject to the approval of the Commission’s Telecommunications Division. Tariff filings shall reflect all fees and surcharges to which Applicant is subject, as described in Conclusion of Law 4. Applicant is also exempt from GO 96-A Section III.G.(1) and (2), which require service of advice letters on competing and adjacent utilities, unless such utilities have specifically requested such service.

7. Applicant shall file as part of its initial tariffs, after the effective date of this order and consistent with Ordering Paragraph 3, a service area map.

8. Prior to initiating service, Applicant shall provide the Commission’s Consumer Services Division with Applicant’s designated contact persons for purposes of resolving consumer complaints and the corresponding telephone numbers. This information shall be updated if the names or telephone numbers change or at least annually.

9. Applicant shall notify this Commission in writing of the date local exchange service is first rendered to the public within five days after service begins. The same procedure shall be followed for the authorized intraLATA and interLATA services, where applicable.

10. Applicant shall keep its books and records in accordance with generally accepted accounting principles.

11. Applicant shall each file an annual report, in compliance with GO 104-A, on a calendar-year basis using the information-request form developed by the Commission Staff and contained in Appendix A.

12. Applicant shall ensure that its employees comply with the provisions of Pub. Util. Code § 2889.5 regarding solicitation of customers.

13. The certificate granted and the authority to render service under the rates, charges, and rules authorized will expire if both IEC and CLC authority are not exercised within 12 months after the effective date of this order.

14. The corporate identification number assigned to Applicant is U-6543-C which, shall be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

15. Within 60 days of the effective date of this order, Applicant shall comply with Pub. Util. Code § 708, Employee Identification Cards, reflecting its authority, and notify the Director of the Telecommunications Division (TD) in writing of its compliance.

16. Applicant is exempted from the provisions of Pub. Util. Code §§ 816-830.

17. Applicant is exempted from Pub. Util. Code § 851 for the transfer or encumbrance of property, whenever such transfer or encumbrance serves to secure debt.

18. If Applicant is 90 days or more late in filing an annual report or in remitting the fees listed in Conclusion of Law 4, the TD shall prepare for Commission consideration a resolution that revokes that petitioner's CPCN, unless it has received written permission from the TD to file or remit late.

19. It can be seen with certainty that no material adverse environmental impacts will result from the limited CPCN authority granted in this order.

20. Applicant shall comply with all applicable rules adopted in the Local Exchange Competition proceeding (R.95-04-043, I.95-04-044), the Commission's rules and regulations for NDIECs set forth in D.93-05-010 and D.90-08-032 as well as all other applicable Commission rules, decisions, General Orders, and

statutes that pertain to California public utilities, subject to the exemptions granted in this decision.

21. Applicant's motion for a limited protective order keeping the designated Exhibit 5 and Exhibit 7 each containing confidential information is granted. Such exhibits will remain under seal for two years from today unless Applicant makes a timely request for extension of confidential treatment by filing a separate motion with good cause shown at least one month prior to the expiration of the confidential treatment.

22. The Applicant of Zephion is granted only as set forth above.

23. Application 01-01-020 is closed.

This order is effective today.

Dated June 28, 2001, at San Francisco, California

LORETTA M. LYNCH
President
HENRY M. DUQUE
RICHARD A. BILAS
CARL W. WOOD
GEOFFREY F. BROWN
Commissioners

TO: ALL COMPETITIVE LOCAL CARRIERS AND INTEREXCHANGE
TELEPHONE UTILITIES

Article 5 of the Public Utilities Code grants authority to the California Public Utilities Commission to require all public utilities doing business in California to file reports as specified by the Commission on the utilities' California operations.

A specific annual report form has not yet been prescribed for the California interexchange telephone utilities. However, you are hereby directed to submit an original and two copies of the information requested in Attachment A no later than March 31st of the year following the calendar year for which the annual report is submitted.

Address your report to:

California Public Utilities Commission
Auditing and Compliance Branch, Room 3251
505 Van Ness Avenue
San Francisco, CA 94102-3298

Failure to file this information on time may result in a penalty as provided for in §§ 2107 and 2108 of the Public Utilities Code.

If you have any question concerning this matter, please call (415) 703-1961.

APPENDIX A

Information Requested of California Competitive Local Carriers and Interexchange Telephone Utilities.

To be filed with the California Public Utilities Commission, 505 Van Ness Avenue, Room 3251, San Francisco, CA 94102-3298, no later than March 31st of the year following the calendar year for which the annual report is submitted.

1. Exact legal name and U # of reporting utility.
2. Address.
3. Name, title, address, and telephone number of the person to be contacted concerning the reported information.
4. Name and title of the officer having custody of the general books of account and the address of the office where such books are kept.
5. Type of organization (e.g., corporation, partnership, sole proprietorship, etc.).
If incorporated, specify:
 - a. Date of filing articles of incorporation with the Secretary of State.
 - b. State in which incorporated.
6. Commission decision number granting operating authority and the date of that decision.
7. Date operations were begun.
8. Description of other business activities in which the utility is engaged.
9. A list of all affiliated companies and their relationship to the utility.
State if affiliate is a:
 - a. Regulated public utility.
 - b. Publicly held corporation.
10. Balance sheet as of December 31st of the year for which information is submitted.
11. Income statement for California operations for the calendar year for which information is submitted.

(END OF APPENDIX A)

APPENDIX B

List of deficiencies in tariff filed by Domino Networks Communications, Inc. in A.01-01-020 to be corrected in Tariff Compliance filing.

1. Sheet 62, Rule 3: Include the 2nd and 4th paragraph from Rule 2 of Appendix B of D.95-07-054 into the CLC tariff.
2. Sheet 62, Rule 6: State in the tariff that credit cannot be denied for failure to provide social security number. Also, include Rule 6C from Appendix B of D.95-07-054 into the CLC tariff.
3. Sheet 74, Rule 9: Incomplete rule on Rendering and Payment of Bills. Include Rule 9 of Appendix B of D.95-07-054 into the tariff.
4. Sheet 75, Rule 9D: Include the following corrected surcharges:

<u>Period</u>	<u>Effective 01/01/01</u>
ULTS	0.800%
CRS/CDFS	0.000%
CTF	0.185%
5. Sheet 76, Rule 10(2): State in the tariff that the “Due By” date shall be no sooner than 15 days of the date of presentation. Refer to Rule 8B from Appendix B of D.95-07-054.
6. Sheet 80, Rule 12: Tariff must be available for inspection at an office in California.
7. Sheet 81, Rule 14D: State in the tariff that the company concurs with Pacific Bell’s Limitation of Liability tariffs regarding credit for service interruptions as appended to D.95-12-057.

(END OF APPENDIX B)